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# VIRGINIA FIRST AND LEE

AN ADDRESS BY

HENRY W. ANDERSON

DELIVERED AT RICHMOND, VIRGINIA

ON VIRGINIA DAY

JANUARY 22, 1917

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*It is the custom of The Woman's Club of Richmond to celebrate "Virginia Day" in each year on the Monday nearest the 19th of January, the anniversary of the birth of General Robert E. Lee.*

*This address was delivered before the Club on "Virginia Day," January 22, 1917. It was intended primarily as an appeal for the proper appreciation and development of the essential principles of American civilization at a time when the conditions in America and in the world demand the maintenance and fearless assertion of those principles. My labor shall not have been in vain if two or one among those who heard or may read this address shall have been led thereby to a clearer appreciation of the rights, and more especially the duties and obligations, of American Citizenship.*

*H. W. A.*

*Richmond, Va., January 31, 1917.*



## Virginia First and Lee

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Among the many evidences of admiration and esteem which came to General Robert E. Lee from all parts of the world during the few years which intervened between the close of the civil war and his death in 1870, was a translation of the Illiad sent by the translator, Philip Stanhope Worsley of Oxford, in which were inscribed the following presentation lines:

“To GENERAL LEE.

The most stainless of living Commanders,  
and, except in fortune, the greatest,  
this volume is presented  
with the writer's earnest sympathy  
and respectful admiration.

“The grand old bard that never dies,  
 Receive him in our English tongue:  
 I send thee but with weeping eyes  
 The story that he sung.

“Thy Troy is fallen, thy dear land  
 Is marred beneath the spoiler’s heel:  
 I cannot trust my trembling hand  
 To write the things I feel.

“Ah, realms of tombs! but let her bear  
 This blazon to the last of times:  
 No nation rose so white and fair,  
 Or fell so pure of crimes.

“The widow’s moan, the orphan’s wail  
 Come round thee, yet in truth be strong:  
 Eternal right, though all else fail,  
 Can never be made wrong.

“An angel’s heart, an angel’s mouth,  
 Not Homer’s could alone for me,  
 Hymn well the great Confederate South,  
 Virginia first, and LEE!”

This tribute both to Virginia and her favorite son, seems peculiarly appropriate to “Virginia Day”—a day set aside in your calendar to do honor to our native State,



and fixed with reference to the anniversary of the birth of Lee: a day in which the ideal expressed in the words, "Virginia first, and Lee," must dominate our thoughts and claim our loving homage.

When I received the invitation to address your Club on "Virginia Day," these lines of the English poet seemed to convey a note of warning, for no subject other than one connected with Lee and his service to Virginia could be appropriate for discussion, yet this theme had been adjudged beyond the majestic genius of Homer.

But they bore also a suggestion, that the nature of the occasion, as well as the exalted character of the one fitting theme, imposed a duty; that we should forget self and all thought of our own achievements,

and should see in this day an opportunity to stand together in the white light of the spirit of Virginia as expressed in the life of Lee, and seek to draw therefrom guidance for our own lives and inspiration for our own citizenship, that we may prove worthy of his example and the highest ideals of the state which he loved. I am here, therefore, not as a teacher but as a student who would seek with you to find the true meaning of "Virginia Day" as expressed in certain incidents of its history, and illustrated in the citizenship of Lee.

In discharging this duty, we are in fact following the path which leads to a sound appreciation of our state and our own obligations of citizenship. If we look back

over the courses of history, it seems that each era or phase of political development has sought its true expression in some one man who has embodied in his life and character the peculiar qualities and ideals of his time. When the Athenian civilization had risen to its highest level, it found in the person and life of Pericles expression of its exalted beauty, before it yielded to the demagogues and drifted to decline. Rome struggled up through centuries to give expression to the spirit of disciplined power and law in Caesar, and then the light of its civilization slowly faded into the darkness of the middle ages. In later times we see the spirit of absolute monarchy expressed in Louis XIV, the very embodiment of the Machiavellian state.

The period of English feudalism culminates in the strong and chivalrous Warwick, and then gives place to other ideals. The spirit and impulse of the colonial era in America found their final and noblest expression in Washington; while the quasi-feudal age of Virginia can have no surer ground upon which to base an appeal to the judgment of history than the fact that it could produce the life and character of Lee as its noblest gift to mankind.

Thus each school of political thought serves its day and is discarded, but before it passes away its ideals are perfected in some great character raised above the confusion of the mass, an example of what it can produce, and a beacon light to guide

humanity along the unexplored track of some new experiment.

These men are more than historical characters; they are living, vital forces, for they embody and express not only the ideals of their times, but principles which are eternal and unchangeable, though applied to constantly changing conditions. It is only through a study of their lives that we may learn to view the spirit of history as a living thing; to see the elements of social development in human garb; and thus to realize their values and apply them in the solution of our own social and political problems.

When we take up the study of that portion of the history of Virginia which is associated with Lee, and of Lee as a citi-

zen or in his relations to the state, we enter at once into the realm of controversy.

Virginia had been the leader in the establishment of the American Union, had accepted its Constitution, and had been for seventy years a part of the territory of the United States. She then undertook to withdraw from the Union.

Lee was a citizen of Virginia. He was educated at West Point by the Government of the United States, and became an officer in its army, taking the oath of allegiance to its flag. When Virginia undertook to secede from the Union, he resigned and subsequently accepted a commission from his state and bore arms against the Government of the United States. There are those who believe that, in seceding from

the Union, Virginia violated her plighted faith; and, while readily conceding the exalted personal character and purity of purpose of Lee, yet believe that he erred in his conception of civic obligations and failed to discharge his duties as a citizen.

In any discussion of this period in the history of Virginia, or the citizenship of Lee, this question must be examined. It necessarily involves an inquiry into the nature of the state and the rights and obligations of citizenship.

We are accustomed to think of the state as a distinct entity, possessed of powers inherent in itself which we call sovereignty, and free from the moral and legal obligations of the individuals of whom it is composed. There is, in fact, no such thing,

for the state is but the body of its citizens, and in a very real sense each citizen may be said to carry within himself the essential elements of the state.

This conception of the state as a separate and distinct entity, making laws which its citizens must obey, and free from the moral and legal obligations of the individual, results from long standing tradition, and is preserved by the almost irresistible instinct of the human mind to grasp the concrete instead of the abstract, thus leading us to look upon the Government, which is but an agency for the accomplishment of the ends of state, as the state itself.

The results of this misconception are manifest. Instead of centering our devotion upon the great moral principles



which must constitute the living spirit of any lasting state, we unconsciously attach our allegiance to the government which is composed of ever changing men. We lose sight of principles before the concrete embodiment of power, and come to regard the power to enforce commands as involving the right to give them. From this state of mind, it is but a short step to an acknowledgment of the constantly recurring fallacy that might is right, that the king, or the majority, "can do no wrong."

It is obvious therefore that a clear understanding of the nature of the state and of the sources of its sovereignty, is essential to an accurate conception of its powers

and limitations and of the rights and obligations of citizenship.

If we inquire into the origin of the state, we are unable to find that it was the result of any conscious exercise of the human will or intelligence, but it appears to have come into existence through the operation of the most elemental forces or instincts of human nature.

The ties of blood, the need of food and clothing, the necessity for protection, as well as the predatory instincts of humanity, led men of common origin or interests to band together into primitive organizations. These organizations required leaders with power to command. The strongest were chosen for these positions or won them through the exercise of

the strong arm of might. From the custom of commanding and obeying in time of war, soon grew the habit of giving orders and yielding obedience in times of peace. Through these processes the semblance of order was established and mankind, accepting that to which it was accustomed, soon learned to regard the power to command as the basis of the right. Thus there was built up a social and political organization dominated by force, and the state emerged from the mists of prehistoric times with the relations of ruler and ruled already established, and with the vision of the abstract state lost in the person of the ruler.

The state which thus came into existence was not a moral organism; it was a preda-

tory enterprise responding to the elemental human instincts already mentioned. It knew no obligations to mankind, but was the embodiment of the idea of Cain that man was not his "brother's keeper." In the earlier history the conquest of other tribes or states resulted in their entire destruction or the banishment of the few survivors from the land. Later the conquered, instead of being destroyed, were permitted to remain as slaves of the conquerors, to provide for them the necessities of life, leaving their masters free to carry on their predatory warfare. Thus the social organization was formed, with all the gradations of class, from the supreme ruler to the humblest slave, slowly to develop through the growing apprecia-

tion of right and justice, into the yet imperfect social and political organization of the modern state.

Any inquiry into the history and development of society demonstrates with startling clearness that, at least until very recently, the controlling impulse in the state, if not the dominant thought of humanity, has been force, and current events have tended to raise the question as to whether this is not yet true. The sense of justice and right, while ever present in the hearts of men to embarrass tyranny, and from time to time to accomplish its overthrow, has been submerged beneath the impelling power of force, which has often justified its actions by the claim of necessity. Not only the physical,

but the intellectual and even the moral qualities of men, have been made servants of force as the dominant principle in the state, have been taught to hymn its praises, and to impress upon the minds of the human race the duty of obedience to its commands.

From the earliest times, the theme of poets and historians has been power and the triumph of force through war. The *Illiad* opens with an invocation to the Muse to sing of Achilles and the "direful wrath" which brought to Greece its sorrows, and the whole poem is a glorification of war and force. The epic of Virgil, celebrating the founding of the Roman Empire and giving expression to its ideals when the highest levels of its civilization

had been attained, is a song of force, beginning with the destruction of Troy and ending with the vision of the ideal Roman in the Elysian Fields, clothed with "armour of glittering grace," and "decked with conqueror's spoils," destined to sustain the Roman State midst the shock of war. The earlier poets of Western Europe delight in like manner to sing of deeds of arms as the noblest expression of human ideals.

History has been equally diligent in its service. From the earliest times, delighting to deal with the obvious and failing to see or appreciate great principles working to their destined goal, historians, with few exceptions, have made of history the record of battles, and seen in the achieve-

ments of men the triumph of force. Men have been called great in proportion as their conquests were extensive. Eras in human development have been made to depend upon decisive battles, and the civilization and civilizing influence of the state have been measured by its ability to dominate men through armed strength.

Law, the handmaiden of Justice, yielded its sanction to might, and the will of the Prince was declared to be absolute; science has been one of the chief instruments in the perfection of the agencies of power; while religion itself has been led to overlook or abandon the moral principles upon which it is founded and to become a worshipper at the altar of force. The biblical history of the Hebrew nation,



though rich in moral teachings, is filled with the record of constantly recurring efforts to dominate or destroy other races in war. Mahomet enjoins his followers to propagate their creed with the sword, and the choicest blessings of Heaven are promised to him who finds death upon the field of battle. Even the religion of Christ, who taught men that they must be brethren and love one another and that the only permanent foundation for human society was justice and love, has been distorted by its followers into an instrument for the forceful domination of men. The inquisition, the torture chamber, the battlefield, have been familiar scenes of the activities of those claiming to be its representatives until it has become an

axiom of political science that of all wars those of religion are the most cruel. Thus every quality and achievement of man has been used to impress upon the human mind the claim that might is right, and that obedience to those who have the power to enforce their commands, regardless of the right, is a civic duty.

It is a mistake to believe that this ideal of force as the dominant principle in the state is associated with any peculiar form of government. While some governments may be better adapted than others to the development of a sense of justice and right, yet history teaches that Monarchy and Oligarchy, Theocracy and Democracy, have all yielded to the seductive influence

of force in order to control the life and development of the state.

The history of monarchies has been one long line of conquests with successive dynasties, first established and then overthrown by force. The theocratic government of Spain gave us the inquisition, and the temporal power of the church completed the devastation of the fair plains of Italy. The oligarchies of the middle ages stand as examples of the abuse of power; and we, who are prone to regard Democracy as the agency for the establishment of justice, may find enlightenment in the fact that the Athenian Democracy slew Socrates and degenerated into a tyranny; while the Democracy of France, established in the name of reason and pro-

claiming justice and fraternity as its mission, placed upon human history the blot of the French Revolution, and so disgusted the world with slaughter and the disregard of the most elemental rights of men, that the absolutism of Napoleon was welcomed as a relief from the excesses of an unrestrained majority.

But you may ask, if the power to command and require obedience be not the true source of sovereignty in the state, from what source is sovereignty derived? That the state must have power to enforce its commands is obvious. Without this power it would be unable to protect its citizens, to punish wrong, or maintain order. It would, in fact, cease to exist. But this power is only an attribute of

sovereignty, not its essence or the source from which it is drawn. As the physical movement of the human body is only the evidence of the life within, and not life itself, so the power of the state is but the manifestation of life which has its existence within the hearts of the people of which the state is composed.

The true source of sovereignty in the state, of its right to command and enforce obedience, as distinguished from mere power, is the moral sense of its citizens, and the relations of right and obligation among themselves and with respect to other states which springs from this moral sense. It is something inherent in man himself, greater than the visible state, and the only sound basis for its existence.

This moral sense of fair play, this recognition of the rights of others and our obligations to them, has been the impelling power which, though often obscured and sometimes seemingly suppressed by overwhelming manifestations of force, has slowly lifted mankind from a state of barbarism to what we call civilization. Both the measure of human freedom and the quality of civilization in any state are in direct proportion to the vigor and influence of this spirit. No state or society, however primitive, has been found to exist in which this moral sense of mutual obligation has not been manifest to some degree, and history presents a long series of instinctive, though unconscious, appeals

of government and of power to this, the true source of sovereignty.

Thus we see in all forms of government a constant striving for some moral ground upon which to base their claims to existence and of right to dominate the lives of men. From the earliest times, governments have not been content with mere physical power, and feeling the falsity of the asserted theory that might was right, have sought the support of the moral sense of society through the claim of divine origin. The princes of the earlier eastern states spoke as representatives of the Gods; the rulers of Greece proclaimed their authority through descent from the Gods, and vindicated their cruelties as being inspired from Olympus; while the Roman

emperors arrogated to themselves divinity during life and deification after death. Throughout the middle ages governments, regardless of the form, claimed the authority of divine right and sought to found their tyrannies upon the sanction of the Church. The French monarchs are told that "The Royal throne is not the throne of man but of God himself" and that they "represented the living God." Even in this age of human enlightenment we find the head of the nation which embodies more nearly any other the ideal of force, solemnly declaring that he rules by divine right and reiterating his alliance with Diety; while we of America assert and pretend to believe the patent absurdity that the voice of the people as expressed



through the majority is the "voice of God." Thus history repeats itself in constantly varying form, but in obedience to the same principles.

The conception of the state as a moral organism deriving its sovereignty from the moral sense of its citizens and their relations of mutual right and obligation, enables us to see, and clearly to define the true functions of government as an agency for the accomplishment of the ends for which the state exists, and to understand and measure the rights and obligations of the citizen.

The sum total of the moral sense of all the citizens of the state may be regarded as a great reservoir from which is derived the life of the state, and which is the source

of its sovereignty. For convenience in administration there comes into existence either by slow processes of development, or by conscious will, a government vested in officials who are entrusted with certain powers of the state and, within the limits prescribed, are expected to discharge its obligations. But this government is a thing distinct from the state itself and is only clothed with such powers as are essential for the administration of the affairs of the state and for the protection and enforcement of the common rights of its citizens. It is not clothed with all the powers of the state and its authority is not absolute, for those moral principles of right and wrong out of which grow the relations of mutual right and obligation existing be-

tween the citizens of the state, are inherent in the individuals, and the rights arising therefrom cannot be alienated or vested in the government. Among these inalienable rights are recognized the right to life, liberty and the pursuit of happiness, the possession and enjoyment of property, and others which are familiar to us all. Since these rights cannot be transferred by the citizen, and are inherent in the very life of man, no government is or can be authorized to violate them or the principles upon which they are founded. A government which seeks to do this is no longer discharging its legitimate functions as the agency of the state, but is guilty of usurpation of power, which, if permitted, must lead to the destruction of

the state itself. Then resistance, by force if necessary, is not only the right but the duty of the citizen.

This view as to the character of the state, and of government as an agency formed for the protection of, and limited by the inherent and inalienable rights of men, has been peculiarly manifest in English civilization. To this fact has been due in a large degree its broad and restrained development, its freedom from great revolutions which have often been necessary among other races to overthrow the agencies of force and restore the government to its legitimate function as the servant, not the master of the people.

The existence of this ideal has been evident in all stages of English history, finding expression in written declarations

or in immemorial customs which are the basis of the English law. So early as 1215, when the idea that might was right was at its zenith in Europe, these principles found expression in the Great Charter wrung from King John (which was but an enlargement of the charter of Henry I), declaring certain limitations upon the government, among others the principles that no man should be "seized or imprisoned or dispossessed or outlawed, or in any way brought to ruin . . . save by legal judgment of his peers or by the law of the land," and that no man should "deny or delay right or justice." These principles, and limitations upon the power of government which they involve, were re-affirmed and expanded by the Bill of Rights adopted in

1688, and the courts, which were to determine these rights, were made independent by life tenure.

Under the English system these declarations of inherent rights are not a part of the positive law. While they exercise a potent moral influence and have generally been respected, they do not constitute legal limitations upon the powers of the government which in theory is supreme. There is no agency by which an act in violation of these principles may be declared void, as being beyond the powers granted by the people. Should the government be guilty of such violation and encroach upon the inherent rights of its citizens, the remedy lies in the forcible overthrow of usurpation, and the restora-

tion of the rights of the people by revolution, conditions of which we have notable examples in the revolutions of 1649 and 1688.

During the period of colonization in America, the English people were stirred by the discussion and defense of these great principles of civil liberty and the rights of men as limitations upon the powers of government. The revolutions of 1649 and 1688, which resulted in the final overthrow of the claim of absolute and divine right (which never had been admitted), in the English monarchy and the assertion of the principles of liberty contained in the Bill of Rights, occurred in the midst of American colonization. The colonists came to America with their minds

imbued with the principles established and re-affirmed in these great declarations, only to have their convictions strengthened and vision broadened by the freedom of that simple civilization amidst the expanding influence of the beauty of the new world.

Both in Europe and in America the Eighteenth Century was a period of intense examination into the principles involving the rights of men and the just limitations upon the power of government. This examination resulted first in the war for American Independence, and afterwards in the overthrow of the monarchy of France. Perhaps no people in history have been more familiar with the principles underlying the science of government



than that remarkable group of men under whose leadership American independence was achieved and the American Republic established. It is not surprising, therefore, that we find these principles and the limitations which they impose upon power, stated in the Declaration of Independence as self-evident truths, that "all men . . . are endowed by their creator with inherent and inalienable rights; that among these are life, liberty and the pursuit of happiness; that to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends it is the right of the people to alter or abolish it and to institute a new govern-

ment, laying its foundation on such principles and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness.”

But the founders of the American state were not content with a mere declaration of principles as a moral restraint upon government. They had seen the principles embodied in the great charter and the bill of rights, violated by the tyranny of power, requiring the blood and sacrifice of revolutions for their restoration; while the war of independence then in progress resulted from a disregard of these inherent rights. They proposed to go a step further and create a system of government in which the rights of the citizen and the powers of the government should be clearly

expressed and defined by positive law, and any act of the government in excess of the powers so granted or in violation of the limitations so imposed, should be void.

When the state governments were formed, following the declaration of independence, these inherent principles were embodied in the bills of rights and protected by constitutional limitations. The bill of rights of Virginia declared that "all men are by nature equally free and independent, have certain inherent rights of which, when they enter into a state of society, they cannot by any contract deprive or divest their posterity." And among the rights so enumerated were, "the enjoyment of life and liberty with the means of acquiring and possessing property and

pursuing and obtaining happiness and safety." They also declared as fundamental principles that all power was derived from the people of a state, that the officers of the government were but "their trustees and servants," and that when any government was contrary to those principles or exceeded its authority it should be reformed or abolished.

When the federal union was created by the adoption of the Constitution of the United States, these principles were again reaffirmed, and it was made a condition of the ratification of the constitution that the first ten amendments, embodying some of the rights so secured, should be added as limitations upon federal authority. Virginia even went so far in the resolutions

ratifying the federal constitution as to declare in express terms that the powers therein granted might be resumed whenever the same should be "perverted to the injury or oppression" of the people.

But these declarations of principles and constitutional limitations imposed upon government could have but little more than moral effect unless there was some agency to determine when they had been violated, and to hold the government within the limitations so prescribed.

This had been the weakness of the English system. The government could abuse the powers with which it was clothed, might violate or set aside these inherent rights of its citizens which were recognized by custom or declared in the Great Charter

or the bill of rights; but there was no agency vested with power to declare these acts of usurpation void, and they were legally valid, and were given effect, until the moral sense of the people became so outraged and aroused that they matched force against force and overthrew the government by revolution.

The founders of the American state, therefore, determined to go further. They not only embodied the inherent principles of right and justice in their fundamental law and declared these principles to be limitations upon the powers of government, but in the very instruments by which the government was created and its powers so limited and defined, they provided for the Supreme Court of each state and later,

in the federal constitution, for the Supreme Court of the United States. These courts were given the power to construe the constitution and the laws or acts of government in pursuance thereof, to determine whether such laws or acts exceeded the powers vested in the government or violated the inherent and inalienable rights of its citizens, as declared in the fundamental law. If this was the case, then such laws or acts were void; not by virtue of any power in the court to annul them, but by the operation of the constitution itself. It was simply an act of an agent in excess of his authority and therefore void as to the principal. The people were under no obligation to obey or respect

such acts and it became a duty of citizenship to resist their enforcement.

By thus embodying these inherent and inalienable rights of men in the positive law as a restraint upon the acts of the majority, and creating courts with power to construe the constitutions and laws, and to declare void any act of government in excess of the limitations imposed by or in violation of the fundamental principles so declared, the founders of the American Republic recognized and established the essential difference between the state and the government; that all sovereignty was in the people arising out of their moral sense of right and fair play, and the mutual obligations which result therefrom. They went a step beyond any experiment in



history and gave to the State a position of security before unattained. This is America's greatest contribution to political science and to the cause of human liberty.

But even that security is not absolute and its maintenance depends upon the people themselves. The courts may declare such acts of usurpation to be void, and it is their duty to do so, but they are without physical power to restrain the government within the constitutional limitations thus lawfully ascertained, if it refuses to respect and obey the decision. Like all law, regardless of forms of government, the decisions of the courts finally rest for vitality and authority upon the moral sense of the people—the true source

of that sovereignty in the name of which the courts must speak.

If I have succeeded in making clear the true nature and historical development of the state and the sources of its sovereignty, as well as the functions of government as a limited agency for the expression of its life and the achievement of its legitimate aims, the determination of the questions as to the course of Virginia, and of Lee as a citizen, in the crisis which arose out of the events preceding the Civil War, becomes comparatively simple.

Neither my time nor inclination will permit a discussion of the legal details. It is sufficient to say that the question of primary and ultimate sovereignty as between the state and the nation, which was neces-

sarily involved in the claim of the right to secede from the Union, was left open by the federal constitution.

The members of the Constitutional Convention who believed a strong central government necessary for the development of the country and desired to create a nation through which should be expressed the sovereignty of the whole people which then resided in the several states, realized that it was impossible at that time to induce the people of the states to surrender this sovereignty by express terms. They believed, however, that this was the legal effect of the constitutional compact and that with the development of the country the union thus created would become in fact "more perfect" until the ideal of individual state

sovereignty would be lost in the greater ideal of nationality. On the other hand, those who adhered to the principle of state sovereignty believed that it was preserved by the limitations of the federal constitution and that the true effect of that instrument was to create a voluntary union of sovereign states which might be dissolved at will. Thus the seeds of conflict were sown in the convention itself, for there was in fact no "meeting of the minds" of the different schools of thought as to the intent and legal effect of the constitution with respect to sovereignty which is essentially indivisible. A study of contemporary history leads to the conclusion that at the time of the adoption of the constitution, the states did not believe that the act

of ratification involved an irrevocable surrender of sovereignty, and, as I have pointed out, the Virginia convention, by the resolution ratifying the constitution, reserved the right to the people to resume the powers conferred upon the federal government when those powers should be perverted to their injury. The meaning of this language has been the subject of much honest difference of opinion, but it was undoubtedly construed by a majority of the people of Virginia as a reservation of the right to secede from the union when in their opinion these conditions had arisen.

Instead of being gradually eliminated through the growth of a national spirit and ideal, these questions became acute as a re-

sult of peculiar social conditions, and of different lines of development in the conflicting sections. The North, while originally adhering to the idea that the ultimate sovereignty was vested in the state, was a commercial community, and demanded the broader principles of nationality, as embodied in the ideal of a supreme and expanding federal government, for the expression of its life, and the national power to open the way and afford protection for its growing trade. The South, an agricultural community clinging with characteristic tenacity to old ideals, found in the state adequate means for the expression of its life, and adhered to the theory that ultimate sovereignty was vested in the state. This question might still have

been peacefully determined by the Supreme Court, as contemplated by the constitution, but for the passions aroused over the institution of slavery, which made compromise impossible and conflict inevitable.

The people of Virginia had never favored the institution of slavery. It was contrary to the ideals and the principles upon which this state was founded. While yet attached to the British Crown, Virginia had protested no less than twenty-seven times against the introduction of slaves into the colony. In the convention which adopted the federal constitution, she had led a movement to prohibit the slave trade at once, but was defeated by the combined votes of New England and the Southern States, and this iniquitous traffic was

legalized until 1811 over her protest. During the entire period from the founding of the state to the civil war, one of the problems which engaged the active attention of her leading statesmen and thinkers, was to devise some plan for the abolition of slavery with justice to the slave and without endangering the security of her people. History furnishes no more tragic instance of a people struggling against an institution which they did not approve, imposing responsibilities which they could not ignore, and in the end bringing to them the tragedy of war with the social and political evils which have followed in its train.

But Virginia did believe in the inherent and inalienable rights of her citizens, which she had embodied in her bill of



rights, and had insisted should be a part of the federal constitution. She now believed that these rights were about to be destroyed by force. She did believe that the states reserved to themselves ultimate sovereignty, with the right to withdraw from the union when the federal compact was violated or abused. A majority of her people thought that she had expressly reserved this right to herself; but she now saw it denied, and was confronted with the purpose of federal government to challenge its exercise by force. She did believe that the government existed only by consent of the governed; but it was now proposed to establish its dominion over herself and her sister states by force. She did believe that the right to own and enjoy

property was an inherent right of her citizens which neither the state nor the federal government could deny or impair; but now it was proposed to destroy the property of her citizens invested in slaves and declared by the Supreme Court of the United States to be inviolate, without regard to their rights and without compensation. To deny these principles, to fail to stand in their defense at any cost or sacrifice, would have been to dishonor her name and prove false to the ideals of her existence.

Virginia did not believe that war was necessary. She called a peace conference, but the extremists on both sides refused to take part. She appealed to her sister states of both sections to compromise their differences and preserve the Union, but

her appeals were in vain. At last she was confronted with the question as to whether she should abandon the principles which were inherent in her being, and become a party to an effort to enforce upon her sister states of the South a government which they did not desire and to which they did not then consent; or be true to her principles, and sacrifice all in an effort to defend those rights which she believed and had declared to be inalienable—which she held in trust for posterity. There could be but one choice. She accepted the issue and made of her plains a battlefield for the continent, and sacrificed her people in defense of her conception of right and justice. Virginia failed. The scars of the conflict are still visible. The poverty

which came as a result of the devastation of war is not yet relieved; the social and political problems which resulted from defeat are not yet solved and may tax the resources of this and future generations; but no son or daughter of this Commonwealth who is worthy of the heritage, can fail to find glory in her deed, or to gather inspiration from her immortal sacrifice for the principles of constitutional government.

What, then, was the position of Lee, and what was his duty as a citizen? He was not only an officer of the army of the United States but, like other Virginians, was profoundly devoted to the Union. To follow his state was to do violence to these feelings, and meant a sacrifice of his career

with its opportunities for honor and achievement.

But Virginia had withdrawn from the Union and asserted the principle which a majority of her people had always believed, that in accepting the Constitution of the United States she had not divested herself of sovereignty or the primary allegiance of her citizens. The Constitution made no provision for citizens of the United States, but a citizen of a state which was a member of the Federal Union by that fact became a citizen of the United States. Sovereignty and citizenship were inseparable. If ultimate sovereignty rested in the state, as the majority of Virginians believed, then the allegiance of the citizen was due to the state.

Of the truth of this view as to citizenship Lee had no doubt. It had been maintained by distinguished authorities from the foundation of the government, and had been approved by many courts. Lee and other Virginians had to decide the question for themselves, and if they decided honestly, as no one can doubt that Lee did, their decision was right.

But Lee did not base his action entirely upon the technical obligations of citizenship. Like all leading Virginians of his time he was a student of the principles of government and believed in those inalienable rights of men which are the life of the state. He believed that those rights were being violated, that a govern-

ment was being forced upon Virginia and the Southern States, to which they did not consent; that the property rights of Virginians were being invaded and their property destroyed in direct violation of the limitations imposed upon the government by the inherent principles of the state and the express provisions of the constitution.

On January 23, 1861, he wrote from Fort Mason, Texas:

“The South in my opinion has been aggrieved by the acts of the North, as you say. I feel the aggression, and am willing to take every proper step for redress. It is the principle I contend for, not individual or private benefit. As an American citizen I take great pride in my country, her prosperity, and her interests, and would defend any state if her rights were invaded. But I can anticipate no greater calamity for the country than a dissolution of the

Union. It would be an accumulation of all the evils we complain of and I am willing to sacrifice everything but honor for its preservation."

Again, in writing to his sister on the day after he resigned his commission in the United States Army, he says:

"The whole South is in a state of revolution into which Virginia, after a long struggle, has been drawn; and, though I recognize no necessity for this state of things, and would have foreborne and pleaded to the end for redress of grievances, real or supposed, yet in my own person I had to meet the question whether I should take part against my native state. With all my devotion to the Union, and the feeling of loyalty and duty of an American citizen, I have not been able to make up my mind to raise my hand against my relatives, my children, my home. I have therefore resigned my commission in the army and save in defense of my native state, with the sincere hope that my poor service may never be needed, I hope I may never be called upon to draw my sword. I know you will blame me, but



you must think as kindly of me as you can and believe that I have endeavored to do what I thought right."

In a talk with one of his generals a few days before the surrender at Appomattox, he declared that he had never believed that the South could succeed without the intervention of some foreign power, and then added:

"But such considerations really made with me no difference. We had, I was satisfied, sacred principles to maintain and rights to defend, for which we were in duty bound to do our best, even if we perished in the endeavor."

These and numerous other quotations which might be produced from his writings, show that Lee, while convinced that the obligations of allegiance and citizenship were due to his state, saw in this struggle an effort to invade and destroy by

force those inherent rights of its citizens, which he conceived it to be the duty of the state and its citizens to protect. Believing these things to be true, he could follow but one course. In sacrificing the ties and opportunities of his career to his conception of right, in giving his life to his state in defense of constitutional government, he discharged the highest duties of a citizen, and expressed the true spirit of Virginia.

This is now history. Virginians yield to none in their devotion to the Union and their readiness to uphold its institutions and the duties of American citizenship; but as they look back over half a century they are moved by a feeling of pride in the readiness of Virginia, when forced to

meet the issue, to be true to her traditions and the principles upon which her civilization was founded, and to sacrifice all in defense of her conception of right; while they read in the life and services of Lee an expression of the true spirit of his state, and the highest ideals of its citizenship. We may leave the name and fame of Virginia and of Lee to the verdict of history, sustained by the truth that,

“Eternal right, though all else fail,  
Can never be made wrong.”

We now turn to another page of history, illumined by the spirit of Virginia and the citizenship of Lee. The war was over. Virginia and the South had met defeat, and Lee came from the field of surrender a paroled prisoner, but wearing the laurel

of the greatest Captain of his time, and one of the greatest in history.

A storm interrupts for a period the orderly operation of the laws of nature, uprooting trees, overthrowing structures, and spreading devastation; but the fundamental principles of natural life, and the processes of their development, are not permanently affected. The storm passes, the sun shines and nature quietly proceeds with her work, recovering the waste places and speaking to the world her "various language." So, the agencies of force, borne upon the winds of passion, uprooted for a time the operation of the principles of justice; and the inalienable rights of life, liberty and the possession and enjoyment of property, which are the basis of

the state, and were guaranteed by our constitution, had been invaded—as always when force dominates the minds of men. For the wrongs so perpetrated there was no redress. Yet the fundamental principles of our constitution were not permanently impaired, and slowly reasserted themselves to guide us along our broader path of national development to the achievement of our national destiny.

But there was a profound change in the theory and structure of the American Republic. The federal union had been fused into a nation in the crucible of war, and it was now established that sovereignty, which by its nature is indivisible, was not in the state, but in the nation,

that the primary allegiance of citizenship was due to the national government.

That new charter of American liberty, the Fourteenth Amendment to the Federal Constitution, adopted as a result of war, expressly provided for the protection of the privileges and immunities of citizens of the United States, as well as citizens of the several states, and thus created a primary citizenship in the United States which had not before existed. It reaffirmed the inalienable rights of men to life, liberty and the possession and enjoyment of property, and placed these rights as well as those of citizenship under the additional protection of the national government. We went into a period of war with sovereign states joined in a federal union; we came out a

nation, with the states as political subdivisions of the whole, but those inherent human rights and obligations which lie at the basis of the state were unchanged, and were further strengthened and protected by the provisions of the Federal Constitution.

The federal government had justified the invasion of the Southern States on the ground that they had no constitutional power to secede from the union, and were in rebellion. If this theory was correct, then, by the conclusion of peace, the seceding states accepted this view and were necessarily restored to their position and rights as members of the federal union. But, with the restoration of peace, this contention was abandoned, and the Southern

States were required to accept the harsh provisions of the reconstruction acts, as conditions precedent to their return to the union and the restoration of their national rights.

Under these difficult conditions, Virginia was true to the spirit which she had manifested throughout her history. She had reluctantly fought the war for principle, and now she accepted the result in good faith. As she had been the last of the Southern States to secede and then only when all peaceful methods had failed, so she was the first to accept the conditions imposed and restore her membership in the American Republic, in the creation of which she had borne such an honorable part. Her sovereignty as a state



was ended, but she cared less for the forms of government than for the great principles of justice and right, which were the basis of her existence and the source of her ideals. If in the constantly expanding life of the American people these principles could be better developed through the national government, then she and her citizens asked no higher privilege than to express their lives and to embody their ideals in the national life, and to play their parts in making of the American Republic the lasting abode of human freedom.

These conditions imposed upon Lee the supreme test, and in meeting this test he rose to heights before unattained, and displayed qualities of citizenship which in

their simple grandeur were unequalled even by his genius in war.

When the chapter was closed at Appomattox, he returned quietly to his home in Richmond, a prisoner on parole; his property had been confiscated; he was without means of support for himself or family, and was threatened with trial and punishment for treason. In a letter to a friend, he said:

“I am looking for some little quiet house in the woods where I can procure a shelter and my daily bread if permitted by the victor.”

Offers of money, and positions carrying large financial rewards for the mere use of his name, poured in upon him, but he refused to permit his influence with his people to be capitalized for commercial

purposes. An English nobleman desired him to accept for his use a great estate, but he held that his first duty was to Virginia and said, in response to this generous offer: "I am deeply gratified; I cannot desert my native state in the hour of her adversity. I must abide her fortune and share her fate."

When offered the presidency of Washington College, he hesitated to accept for fear that his having been excluded by the President from the terms of amnesty, might operate to the injury of that institution, and, in expressing this apprehension, said:

"I think it the duty of every citizen in the present condition of the country to do all in his power to aid in the restoration of peace and harmony, and in no way to

oppose the policy of the state or general government directed to that object. It is particularly incumbent upon those charged with the instruction of the young to set them an example of submission to authority . . . . .”

He accepted the results of the war in good faith and refused to be drawn into the controversies of passion and prejudice, then and since too frequent on both sides, and sought by precept and example to induce his people to turn from the past, look to the future, and to discharge in full their duties as citizens of a re-united country.

He promptly applied for restoration of civil rights, declaring that it was “right for him to set an example of formal submission to the civil authorities,” and though his application was denied and he died a

paroled prisoner, his act stands as an inspiring example of citizenship.

His conception of public duty under the trying conditions which prevailed may best be stated in his own words. In a letter to Mrs. Jefferson Davis, dated February 23, 1866, he says:

“I have thought from the time of the cessation of hostilities that silence and patience on the part of the South was the true course and I think so still. Controversy of all kinds will in my opinion only serve to continue excitement and passion, and will prevent the public mind from the acknowledgment and acceptance of the truth.”

In another letter to former Governor Letcher, written just after the war, in speaking of his state, he says:

“The duty of its citizens, then, appears to me too plain to admit of doubt. All should unite in honest efforts to obliterate the effects of the war and to restore the

blessings of peace. They should remain, if possible, in the country; promote harmony and good feeling, qualify themselves to vote and elect to the state and general legislatures wise and patriotic men, who will devote their abilities to the interests of the country and the healing of all dissensions. I have invariably recommended this course since the cessation of hostilities, and have endeavored to practice it myself."

In another letter to General Longstreet, dated October 29, 1867, in refusing to take any part in the political discussion then prevailing, he said:

"I have avoided all discussion of political questions since the cessation of hostilities, and have in my own conduct and in my recommendations to others, endeavored to conform to existing circumstances. I consider this the part of wisdom as well as duty . . . I am of the opinion that all who can should vote for the most intelligent, honest and conscientious men eligible to office, irrespective of former party opinions, who will endeavor to make the new constitutions and the laws passed

under them as beneficial as possible to the true interest, prosperity and living conditions of all classes of people.”

In these and other extracts from his writings which might be produced, he has expressed with his own simple dignity, his conception of American citizenship. He laid aside all thought of self and of personal advantage in discharging his duty to his country. While the passions and prejudices of war were working their evil about him, he sought to teach his people to be obedient unto authority, to look beyond to the time when the mind could conceive the truth, and then to express in their lives, and through the national life, those principles of justice and right in which they believed.

We may search in vain the pages of his-

tory for a character so sublime, an example of citizenship so inspiring, as is found in this old soldier, idolized by his people and admired by the world, quietly putting the past glory of his genius behind him, turning from all honors or rewards, meeting passion with patience, and overcoming prejudice with love, seeking to heal the wounds of war, and, though denied all civil rights, devoting his declining years to teaching the youth of this country the duties of American Citizenship. This is Lee at his best—his richest legacy to mankind.

No study of the citizenship of Lee would be complete, however, which failed to take notice of his respect for the rights of the individual citizen, and his determination to maintain those institutions of govern-



ment which are established to preserve and protect those rights from the encroachments of power. Of this disposition we have numerous instances both in war and peace.\*

These qualities are in fact the essential elements of citizenship, for they manifest the spirit of the individual which finds its

\*In view of some recent experiences in warfare after more than half a century of supposed advance in civilization, his famous Chambersburg order, issued on the march into Pennsylvania a few days before the battle of Gettysburg, is worthy of reproduction, as a striking example of this quality:

“Headquarters Army of Northern Virginia,

“Chambersburg, Pa., June 27, 1863.

“General Order No. 73:

“The commanding general has observed with marked satisfaction the conduct of the troops on the march, and confidently anticipates results commensurate with the high spirit they have manifested.

“No troops could have displayed greater fortitude or better performed the arduous marches of the past ten days. Their conduct, in other respects has, with few exceptions, been in keeping with their character as soldiers, and entitles them to approbation and praise.

“There have, however, been instances of forgetfulness on the part of some that they have in keeping the yet unsullied reputation of the army, and that the duties exacted of us by civilization and Christianity are not less obligatory in the country of the enemy than in our own.

expression in the life and conduct of the state. If we trace the historical development of states of the past, we find that in the earlier periods of their conscious existence, wise and patriotic men have struggled against power for the establishment of the inherent rights of the individual. So long as the citizen was striving for his

"The commanding general considers that no greater disgrace could befall the army, and through it our whole people, than the perpetration of the barbarous outrages upon the innocent and defenseless and the wanton destruction of private property that have marked the course of the enemy in our own country.

"Such proceedings not only disgrace the perpetrators and all connected with them, but are subversive of the discipline and efficiency of the army and destructive of the ends of our present movements.

"It must be remembered that we make war only on armed men, and that we cannot take vengeance for the wrongs our people have suffered without lowering ourselves in the eyes of all whose abhorrence has been excited by the atrocities of our enemy, and offending against Him to whom vengeance belongeth, without whose favor and support our efforts must all prove in vain.

"The commanding general, therefore, earnestly exhorts the troops to abstain with most scrupulous care from unnecessary or wanton injury to private property, and he enjoins upon all officers to arrest and bring to summary punishment all who shall in any way offend against the orders on this subject.

"R. E. LEE, General."

rights, his mind was dominated by the principles of justice, and he recognized the obligation to respect and maintain the rights of others. While these ideals prevailed the state grew in strength and influence and knew the blessings of liberty and prosperity. But when the civil and individual rights had been approximately established, and the country had attained prosperity, men began to think of their interests instead of their rights, and thus lost sight of their obligation to respect and maintain the rights of others, which is the basis of liberty in the state. The standards of thought and action were thus lowered; men struggled for what they could get, not for the preservation of right; and the power to acquire rather than the

duty to protect became the controlling principle in life. The result was that force took the place of justice, and selfishness dominated the thoughts and action of men. Impatient of the restraints imposed upon the power of acquisition by the principles of justice and the inherent rights of mankind, these principles were brushed aside, these rights disregarded, the institutions of government established for their protection were overthrown, and the state was hurried to destruction; another example of human failure through the substitution of might for right.

At no period in our history has there been greater need for the proper appreciation of these truths than there is to-day.

The struggle of centuries for the recog-

nition of the inherent rights of men, has finally established the principle of equality before the law, and the opportunity for social and political development within the limitations imposed by the principles of justice and embodied in our constitution. But, as in the past, men seem now to become wearied of these principles, scornful of these inherent rights, and impatient of the restraints upon the power of the majority.

There is a growing disposition to experiment with human rights, to attempt the regulation of every phase of life by law, and to brush aside every thought of individual liberty. The various institutions of government, local and national, are no longer content to be servants, but seek to become

masters, and any criticism of, or resistance to their acts, is called treason and meets with the threat of punishment. The right to the possession and enjoyment of property so often affirmed as inherent and inalienable, is deemed antiquated; while city, state and nation contend with each other in devising means to confiscate the property of the individual for public use or for the benefit of favored classes, and resent any constitutional limitations upon their efforts to thus purchase popular favor. The idea that taxation should be uniform and that all men should contribute to the maintenance of the state in proportion to their abilities, is quite outgrown, and the majority claims the right to levy unlimited taxes on the small mi-

nority, and then to expend the proceeds—as Athens levied tribute upon her allies to her own corruption, and her ultimate destruction.

Impatient of all restraint and of the slow growth of society along the lines of natural development, we are now told that these inherent principles of right and justice which are the basis of the social state and declared in our fundamental law, as well as the institutions of government which are established for their maintenance and protection, must be swept away, and that we must have a government by the unrestrained will of the majority—a government of men and not of law. A great authority tells us that this is the age of a “New Freedom,” as if the principles of

human freedom were not eternal and unchangeable and inherent in the breast of man; while a Senator of the United States gravely proposed to take from the Supreme Court the power to declare when a law is invalid as being in violation of the constitution, as if it were possible to have an effective constitutional government without some agency to decide when its limitations had been violated.

These conditions, of which the facts cited, are but illustrations, indicate a widespread disposition in America to abandon the Anglo-Saxon ideal of justice and fair play; to overthrow the whole system of constitutional government; and to leave to their fate as playthings of the unrestrained popular will, those inherent



rights of men which are the soul of the state.

It is but another instance of history repeating itself. The courtier of old who won favor by appealing to the vanity or self interest of his king, is reincarnated in the demagogue of today playing upon the instincts of the people. Then it was a prince ruling by "divine right" who could "do no wrong"; to-day it is the voice of the majority which is "the voice of God," and its will is to be the only law. It is thus that the evil genius of force has always undermined the Temple while posing as a friend of Freedom, and it is enough to make the caverns of that evil genius, filled with the skeletons of all the states of history, echo again with demon laughter, to see this land

of boasted liberty thus selling its birth-right of principle for a mess of the pottage of power.

Every intelligent man knows that the progressive development of society is necessary; that many wrongs remain to be righted before the principles of abstract justice prevail in all of the affairs of men. Stagnation means death to the state as to other forms of life, but any effort to force this development, to take away the protection necessary to preserve the inherent principles of right while this growth is being achieved, is equally dangerous and destructive. History, as well as nature about us, teaches that human progress is a process of slow growth, and can only be attained by patient development of ideals

and the careful preservation of those laws of health in the state, which are the eternal principles of right and justice.

But I refuse to believe that it is the destiny of my country so soon to abandon the principles established by the labor and sacrifice of the ages. Like the leader of Israel, the fathers of this republic, their souls perfected by suffering, caught in the distance the vision of a promised land, rich with the fruits of justice and lighted by the sun of human liberty. That vision must not be lost or its attainment made impossible through the softening effects of peace, the seductive influence of prosperity, or by yielding to the advocates of the unrestrained majority speaking, in a siren's voice, of liberty. The remedy for

these tendencies, the hope for the preservation of liberty in America, is not in more laws, or greater license, but in ourselves, in the spirit of each individual citizen, who carries in his breast the essential elements of the state.

If the youth of our country can be taught the true meaning of citizenship; to think less of their interests and more of their obligations; if we can by precept and example cultivate in their hearts the true spirit and ideals of our civilization, as expressed in the life and character of Lee; then the vision of the fathers may yet be realized, and our beloved country may stand as a beacon light to illumine the path of the nations, and fulfil the hopes of mankind.

This is one meaning of Virginia Day, a

lesson of the citizenship of Lee; a meaning and a lesson which speaks as a call to duty to every woman of Virginia and of America.

The essence of citizenship is a thing of the spirit, not the act, for action is but the outward expression of the spiritual impulse. The spirit and therefore citizenship of this State and of the nation rests in the keeping of its mothers, whose greatest and most lasting work "is not the shaping of frail and perishable matter, but the moulding of the immortal mind and the fashioning of beings that are to exist forever."

If you will implant and cultivate in the hearts of youth that love of country which leads them to study and to understand the principles which are the foundations of

this Republic, and to uphold those principles even though they shall “perish in the endeavor;” to place country above party and duty above self interest; to maintain justice and right against absolutism masquerading in the name of freedom; to go forward, yet to preserve the traditional spirit of Virginia and to expand that spirit until it shall dominate the mind of the nation; then the destiny of our country is secure, and its citizens of the future may feel in their hearts and express through the national life the ideals which the poet saw in

VIRGINIA FIRST, AND LEE!









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